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11 Attorneys for Defendant
12 UBS FINANCIAL SERVICES INC.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 JEFF BOWMAN AND LAUROS REYES
17 aka LARRY REYES, individually, and on
18 behalf of all others similarly situated,

19 Plaintiffs,

20 vs.

21 UBS FINANCIAL SERVICES INC., and
22 DOES 1 through 50, inclusive,

23 Defendants.

CASE NO. C-04-03525 MMC

**DEFENDANT'S NOTICE OF MOTION
AND MOTION FOR ATTORNEYS' FEES
AND COSTS**

Date: August 17, 2007

Time: 9:00 a.m.

Courtroom: 7

Judge: Hon. Maxine M. Chesney

NOTICE

PLEASE TAKE NOTICE that on, August 17, 2007, at 9:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable Maxine M. Chesney in Courtroom 7, 19th Floor, of the United States District Court for the Northern District of California, located at 450 Golden Gate Ave., San Francisco, California, UBS Financial Services Inc. ("UBS") will move for an award of attorneys' fees and costs against Plaintiffs Krenzin and Zurn pursuant to the Joint Stipulation of Settlement and Release Between Plaintiffs and Jeff Bowman and Lauros Reyes and Defendant UBS Financial Services Inc. (Docket 58) and the May 17th Order Denying Krenzin and Zurn's Motion to Confirm Status as Non-Class Members . . . Granting in Part and Denying in Part Defendant's Motion to Enforce Final Order Approving Joint Stipulation (Docket No. 250). While UBS has noticed a hearing date above, it respectfully requests that the Court rule on this motion on the pleadings alone and without a hearing.

This Motion is made pursuant to Local Rule 54-6. UBS's counsel met and conferred with Plaintiff's counsel on May 31st, pursuant to Local Rule 54-6(b)(1). *See* Declaration of Molly Harcos ¶ 17.

This motion is based on this Notice of Motion and Memorandum of Points and Authorities in support of the motion, the Declarations of Mike Lee and Molly Harcos, the pleadings, records, and papers of file in this action, and such further evidence and argument as may properly be presented at or before the hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In March 2007, UBS Financial Services Inc. (“UBS”) filed a Motion to Enforce the Final Order Approving the Joint Stipulation of Settlement and Release (Docket 193), seeking to enjoin Randall Krenzin (“Krenzin”) and William Zurn (“Zurn”), from re-litigating wage and hour claims that they released pursuant to the Joint Stipulation of Settlement and Release in *Bowman* (Docket 58) (“Joint Stipulation”) which this Court approved on November 22, 2006.¹ In addition, on April 13th, Krenzin and Zurn filed a Motion to Confirm Status as Non-Class Member (Docket 222) arguing that they were not bound by the *Bowman* settlement.

These matters came before Judge Chesney on May 17, 2007. The Court denied Krenzin and Zurn’s Motion and granted Defendant’s Motion to the extent the causes of action in question arose during the class period. Order Denying Krenzin and Zurn’s Motion to Confirm Status as Non-Class Members or, Alternatively, For Enlargement of Time to Opt Out of Class; Granting in Part and Denying in Part Defendant’s Motion to Enforce Final Order Approving Joint Stipulation of Settlement and Release; Vacating Hearing (Docket No. 250) 2:2-3, 6:1-4 (“Order”). As the court recognized in its Order, UBS is entitled to attorneys’ fees for which it now moves the Court. *Id.* at 6:26-7:7.

II. THE JOINT STIPULATION MANDATES ATTORNEYS’ FEES IN THIS ACTION

The Joint Stipulation provides,

In the event that one or more of the Parties institutes any legal action, arbitration, or other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, ***the successful party or parties shall be entitled to recover from the unsuccessful party***

¹ Krenzin and Zurn attempted to re-litigate these issues in two pending arbitrations before NASD Dispute Resolution, Inc., *UBS v. PaineWebber Inc. v. Randall Krenzin*, NASD-DR Arb. No. 02-07522 and *UBS v. PaineWebber Inc. v. William Zurn*, NASD-DR Arb. No. 02-07863.

1 *or parties reasonable attorneys' fees and costs*, including expert
 2 witness fees incurred in connection with any enforcement actions.

3 Joint Stipulation ¶ 56 (emphasis added). As the Court recently recognized, UBS is
 4 entitled to attorneys' fees and costs. Order, 6:26-7:7 ("As UBS has prevailed with respect to the
 5 instant motions, *it is entitled, pursuant to the terms of the Settlement, to recover from Krenzin*
 6 *and Zurn the reasonable fees and costs UBS incurred in litigating the instant motions.*")
 7 (emphasis added).

8
 9 UBS's request, for attorneys' fees of \$77,866.05 (\$56,529.25 incurred by Paul
 10 Hastings and \$21,336.80 incurred by Schuyler, Roche & Zwirner, P.C.) and \$570.80 in costs is
 11 reasonable. The Court has the discretion to decide what constitutes a "reasonable" amount of
 12 attorneys' fees in this matter. *See Serrano v. Priest*, 20 Cal. 3d 25, 49 (1977) ("The 'experienced
 13 trial judge is the best judge of the value of professional services rendered in his court, and while
 14 his judgment is of course subject to review, it will not be disturbed unless the appellate court is
 15 convinced that it is clearly wrong.' ") (quoting *Harrison v. Bloomfield Building Industries, Inc.*
 16 435 F.2d 1192, 1196 (6th Cir. 1970)). Paul Hastings, Janofsky and Walker, LLP, and Schuyler,
 17 Roche & Zwirner, P.C. (collectively "UBS Counsel") represented UBS in these enforcement
 18 actions. UBS Counsel calculated their fees by taking the hours worked for each timekeeper and
 19 multiplying those hours by the respective average hourly billing rate for each timekeeper, as more
 20 fully described in the attached declarations of Molly Harcos and Mike D. Lee. *See Serrano v.*
 21 *Priest*, 20 Cal. 3d at 49 ("The starting point of every fee award . . . must be a calculation of the
 22 attorney's services in terms of the time he has expended on the case. Anchoring the analysis to
 23 this concept is the only way of approaching the problem that can claim objectivity, a claim which
 24 is obviously vital to the prestige of the bar and the courts.") (quoting *City of Detroit v. Grinnell*
 25 *Corp.* 495 F.2d 448, 470 (2d Cir. 1974)).

26 27 **III. CONCLUSION**

28 UBS incurred thousands of dollars in attorneys' fees to defend itself, in the

1 arbitrations and litigation Krenzin and Zurn initiated, against claims expressly released in the
2 Joint Stipulation. The Joint Stipulation, and the Court's Order expressly provides for attorneys'
3 fees in connection with such enforcement actions. Accordingly, UBS respectfully requests that
4 the Court grant its motion for attorneys' fees and award UBS its reasonable fees of \$77,866.05
5 and \$570.80 in costs.

6
7 DATED: June 1, 2007

PAUL, HASTINGS, JANOFSKY & WALKER LLP

8
9 By: _____/s/
Molly Harcos

10 Attorneys for Defendant
11 UBS FINANCIAL SERVICES INC.
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